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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/086,451	03/04/2002	Michel Philippe	05725.1033.00	4003

7590

02/18/2005

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EXAMINER

GEORGE, KONATA M

ART UNIT

PAPER NUMBER

1616

DATE MAILED: 02/18/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/086,451

Applicant(s)

PHILIPPE ET AL.

Examiner

Konata M. George

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 04 October 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-27 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-27 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

### **DETAILED ACTION**

Claims 1-27 are pending in this application.

#### ***Action Summary***

1. The rejection of claims 1 and 27 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 1 of USP 6,585,962 B2 is hereby withdrawn as applicant has filed a terminal disclaimer.
2. The rejection of claims 1-4, 8-14, 21, 23 and 27 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 2-13, 18-21 and 23 of copending Application No. 10/086,248 hereby withdrawn as applicant has filed a terminal disclaimer.

#### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1-20 and 25-27 are rejected under 35 U.S.C. 102(b) as being anticipated by Philippe et al. (WO 99/49837).

Philippe et al. discloses in the abstract a polyamino acid having the same general formula as claimed by applicants. The moieties of the prior art are also the same (i.e. X

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is -O, -S; R<sub>1</sub> is hydrogen or a C<sub>1</sub> to C<sub>40</sub> alkyl, etc.). The application of applicants' claimed known compound, as taught by Philippe et al., would inherently treat wrinkles as claimed by applicant. Page 3 [¶0060] teach that hydrophilic active agents such as proteins, protein hydrolysates, amino acids, etc. can be employed in the composition. Examples 11-14 on pages 16-17 teach compositions comprising a polyamino acid compound having concentrations of from 0.1 to 1g or equivalent to 0.001 to 0.01% of the composition together with a acceptable medium such as water. Since the compositions are being used as shampoos and lotions it would fall under the category of being an emulsion as claimed in claim 20 of the pending application.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 21-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Philippe et al. (WO 99/49837) in view of Philippe et al. (US 2002/0164360 A9).

Philippe et al. discloses in the abstract a polyamino acid having the same general formula as claimed by applicants. The moieties of the prior art are also the same (i.e. X is -O, -S; R<sub>1</sub> is hydrogen or a C<sub>1</sub> to C<sub>40</sub> alkyl, etc.). The application of applicants' claimed known compound, as taught by Philippe et al., would inherently treat wrinkles as claimed by applicant. Examples 11-14 on pages 16-17 teach compositions

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comprising a polyamino acid compound having concentrations of from 0.1 to 1g or equivalent to 0.001 to 0.01% of the composition together with a acceptable medium such as water. Since the compositions are being used as shampoos and lotions it would fall under the category of being an emulsion as claimed in claim 20 if the pending application. The prior art does not disclose the composition protecting or caring for the skin of the face, neck, hands, and body.

It is the position of the examiner that it would have been obvious to one of ordinary skill in the art to use the composition in the protection or caring for the skin of the face, neck, hands, and body. As mentioned above the composition as claimed by applicant and the composition of the prior art are the same, therefore the composition of one can be used to treat the other. It is also known that wrinkles are noticeable in the skin of the face, neck, hands, and body, therefore, if the composition is used to treat wrinkles it can be used on those body parts. It is also known to one of ordinary skill in the art that long exposure to sun will cause the skin to wrinkle.

### ***Conclusion***

5. Claims 1-27 are rejected.

### ***Telephone Inquiries***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Konata M. George, whose telephone number is

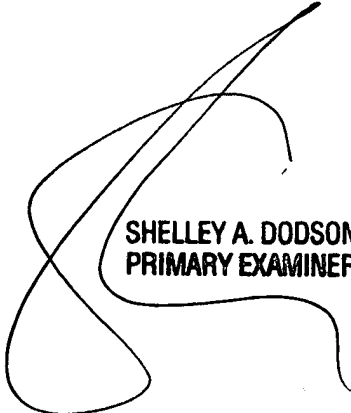
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(571) 272-0613. The examiner can normally be reached from 8AM to 6:30PM Monday to Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gary Kunz, can be reached at (571) 272-0887. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9306 for regular communications and for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (571) 272-1600.

Konata M. George



**SHELLEY A. DODSON  
PRIMARY EXAMINER**